STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission, On its Own Motion	:	
vs.	:	
Central Illinois Light Company, Central Illinois Public Service Company, Commonwealth Edison Company, Illinois Power Company, Interstate Power Company, MidAmerican Energy Company, Mt. Carmel Public Utility Company, South Beloit Water, Gas and Electric Company, and Union Electric Company.	:	Docket No. 00-0494
Proceeding on the Commission's own Motion concerning delivery services tariffs of all Illinois electric utilities to determine what if any changes should be ordered to promote statewide uniformity of delivery services related tariff offerings.	:	

ILLINOIS POWER COMPANY'S REPLY BRIEF

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I. REVIEW OF THE OTHER PARTIES' BRIEFS CONFIRMS THAT ILLINOIS POWER'S BILLING AND POSTING PRACTICES UNDER THE SBO ARE APPROPRIATE, ACCEPTABLE AND DO NOT NEED TO BE CHANGED

In its Initial Brief, Illinois Power Company ("Illinois Power", "IP" or "Company") demonstrated that its practices with regard to billing amounts due for bundled services previously provided to customers who have switched to a retail electric supplier ("RES") and are now being billed by the RES under the "single bill option" ("SBO"), do not cause RESs the types of problems with respect to the SBO that Staff and two RESs testified are created by certain other utilities' practices in this area. Illinois Power explained that it does not send to the RES, to bill under the SBO, amounts owed by the customer for bundled service previously provided by IP, or amounts owed by the customer for delivery services provided by IP when the customer was served by a different RES. Illinois Power explained that it does not require the RES to attempt to collect these prior balances, but rather that IP attempts to collect the prior balances itself by continuing to send bills for these amounts directly to the customer. Further, Illinois Power explained that, solely for purposes of its internal credit system that determines if a disconnection notice will be sent to the customer, IP posts customer payments received from the RES to the customer's oldest balance first (even if the oldest balance is for bundled service), in order to reduce the likelihood that the customer will be sent a disconnect notice. However, *for purposes of the billing information it sends to the RES in subsequent billing periods for the RES to use in billing the customer*, IP **treats all payments that were received from the RES as having been applied to the customer's delivery services charges.** (See IP Init. Br., pp. 1-2, 7-9)

Review of the other parties' brief confirms that Illinois Power's practices are acceptable, that they are not the subject of complaint by any party and do not raise the concerns that Staff and certain RESs have raised with respect to certain other utilities' practices, and that IP should not be required

to change its practices. Five parties – MidAmerican Energy Company ("MEC"), NewEnergy Midwest, L.L.C. ("NewEnergy"), the Illinois Industrial Energy Consumers ("IIEC"), the Attorney General ("AG") and Commission Staff – expressed concerns in their initial briefs about the practices of certain utilities regarding past due balances for bundled service and the SBO. None of these parties directed their concerns to Illinois Power' practices in this area. In fact, several of these parties expressed approval of IP's practices. Accordingly, since both the record and the briefs show that IP's practices do not raise the same concerns for RESs (and Staff) that certain other utilities' practices in this area apparently raise, IP should **not** be required to modify its practices to accommodate a "one size fits all" solution that might be developed *solely in response to concerns about certain other utilities' practices*. (IP Init. Br., pp. 2-3, 10-12)

MEC's position is that (1) it is inappropriate for a RES to be required to bill its customers for unpaid bundled service bills or for delivery services bills owed to another service provider, and (2) the utility should collect its own unpaid bundled service balances. (MEC Init. Br., p. 22) As shown in IP's Initial Brief, IP does not require a RES to bill its customers for unpaid bundled service bills owed to IP, and IP collects its own unpaid bundled service balances. In fact, MEC confirms, in its initial brief, that it approves of Illinois Power's practices, that IP's methodology achieves the same result as MEC's proposed approach, and that IP should be allowed to continue its current practices. (Id., p. 28) Indeed, MEC notes in its brief (id., p. 31) that:

> Illinois Power has recognized the importance of making changes consistent with MidAmerican's proposal. Illinois Power witness Smith testified that setting up a system to track RES bills separately from other customer bills required a significant amount of effort. The system was so designed because Illinois Power believed suppliers would not believe it was their responsibility to try and collect those balances that had occurred prior to them being involved with that particular customer.

MEC's approval of IP's practices is particularly significant because *MEC, acting as a RES, is already providing SBO service to retail customers in Illinois Power's service area.* (Tr. 244-45)

The arguments of IIEC and NewEnergy, in their joint brief, are expressly directed only at two utilities other than Illinois Power. (See, e.g., IIEC/NE Init. Br., pp. 3, 7, 10, 12, 15, 18, 19, 23) IIEC and NewEnergy's position is that a RES should not be required to include unpaid balances for bundled service on the single bills the RES issues to its customers, and that the Commission should order any utility that requires RESs to include unpaid balances for bundled service on single bills to discontinue this practice. (Id., pp. 6, 22) As shown above and in IP's Initial Brief, Illinois Power does not require a RES to include unpaid balances for bundled service on the single bills that the RES sends to its customers. In fact, IIEC and NewEnergy state that the "other utilities" (i.e., those other than the two utilities at which IIEC and NewEnergy have directed their concerns) do not seek to require RESs to include unpaid balances for bundled service on the single bills that the RESs issue to their customers. (Id., p. 23) IIEC and NewEnergy specifically note that Illinois Power has in place a system that allows it to separately track bundled service bills and delivery service bills. (Id.)

The AG's arguments on the SBO issue, like those of IIEC and NewEnergy, are also expressly directed at two utilities other than Illinois Power. (AG Init. Br., pp. 4-5)

Finally, Staff's position is that RESs should not be obligated to include unpaid balances for bundled service on single bills. (Staff Init. Br., p. 4) Again, as shown in IP's Initial Brief, Illinois Power does not require RESs to include unpaid balances for bundled service on single bills. Staff expressly recognizes that "Illinois Power decided not to require single billing suppliers to collect outstanding bundled charges." (Id., p. 6)

Staff also states that single billing revenues should be applied only against delivery services charges. (Id.) As described in IP's Initial Brief, Illinois Power, solely for purposes of its internal credit system that determines whether a disconnection notice is sent to the customer, posts payments received from an SBO RES to the customer's oldest balance first, even if it is a bundled service balance. IP posts customer payments received from a RES to the oldest balance first for purposes of its internal credit system because the age of the customer's outstanding balances is one of the factors that determines if the customer is sent a disconnection notice. ***Minimizing the likelihood of disconnection is beneficial for all interested parties***: the **customer** (because electric service is not discontinued), the **RES** (because it can continue to sell electricity to the customer), **IP** (because it can continue to deliver electricity to the customer), and the **Commission** (because it may get one less complaint). (IP Ex. 1.3, p. 16; IP Ex. 1.5, p. 10) However, *for purposes of the billing information sent to the RES in the following month,* **IP treats such receipts as having been applied to the customer's *delivery services* charges**, and IP *continues to try to collect the bundled service balance directly from the customer.* (See IP Init. Br., pp. 8-9; IP Ex. 1.3, pp. 15-16)

Staff states in its brief that, in general, if a utility applies customer payments received from an SBO RES to the oldest (bundled service) balance first, "then the utility would consider the bill from its delivery charges to be delinquent." (Staff Init. Br., p. 7) The record shows, however, that this is *not* the case under Illinois Power's billing and posting practices: IP may post a payment received from a RES to the customer's unpaid bundled service balance (if that is the customer's oldest balance), in order to reduce the likelihood of the customer being disconnected for non-payment; but *IP does not consider the customer's* **delivery charges** *to be delinquent.* In other words, the RES will never know that IP posted the customer's payment to the oldest balance first, and will

never be affected by IP's internal posting practices (other than the positive effect that the RES's customer is not disconnected for non-payment of a bundled service balance).

Further, not only are IP's posting practices transparent to the RES, they are also fully consistent with the applicable provisions of the Public Utilities Act ("Act"). Section 16-118(b) of the Act (220 ILCS 5/16-118(b)), which establishes the requirement for an SBO tariff, states that the SBO tariff, among other things, "shall (i) require partial payments made by retail customers to be credited first to the electric utility's tariffed services . . . ." "Tariffed services" is defined in §16-102 (220 ILCS 5/16-102) for purposes of Article 16 to mean

> services provided to retail customers by an electric utility as defined by its rates on file with the Commission pursuant to the provisions of Article IX of this Act, but shall not include competitive services.

Article IX of the Act requires a utility to have schedules on file with the Commission setting forth the rates and charges for all services and products offered by the utility. (See, e.g., 220 ILCS 5/9-102 and 9-104) Thus, "tariffed services" as used in §16-118(b) includes all of the utility's services provided pursuant to schedules on file with the Commission, including the utility's bundled services, and is not limited to the utility's delivery services. The only services which are excluded are the utility's competitive services (which, of course, are not provided pursuant to rates on file with the Commission).[1] In short, §16-118(b) allows a utility to credit customer payments received from a

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[1]There can be no contention that the definition of "tariffed services" in §16-102 does not apply to the term "tariffed services" as used in §16-118(b). It is a fundamental principle of statutory construction that a statute must be read as a whole, giving effect to all of its parts. Kraft, Inc. v. Edgar, 138 Ill. 2d 178, 189 (1990); Huckaba v. Cox, 14 Ill. 2d 126, 131 (1958). Further, where the Legislature has defined a term in a statute, that definition applies to every use of the term throughout the statute unless expressly provided otherwise. State Farm Mut. Auto. Ins. Co. v. Universal Underwriters Group, 182 Ill. 2d 240, 244 (1998); Application of County Collector of DuPage County, 181 Ill. 2d 237, 244-46 (1998); Garza v. Navistar Intern. Transp. Corp., 172 Ill. 2d 373, 379-80 (1996).

RES against balances due for the utility's bundled services that were previously provided to the customer.

Moreover, §16-118(b) also provides that the SBO tariff shall

> retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself.

Thus, even though a customer is taking service from a RES under the SBO and is no longer taking bundled service from the utility, the customer may be disconnected by the utility if the customer fails to pay outstanding bills for bundled service. Illinois Power's internal posting practice is therefore particularly salutary, and ***beneficial to all participants***, because by posting customer payments received from the RES to the customer's outstanding bundled service balance (if any), ***IP reduces the likelihood that the customer will be disconnected,*** which would otherwise be authorized by §16-118(b). IP's practice enables the customer to continue to receive electricity, the RES to continue to sell electricity to the customer, and IP to continue to deliver electricity. As explained above, however, in determining the charges to be sent to the RES in the next month for billing, IP attributes the customer payments received from the RES to the customer's delivery services charges.

In summary, Illinois Power **only** sends charges for delivery services to a RES that is billing a customer using the SBO, and does not require the RES to bill and collect outstanding charges for bundled services that IP previously provided to the customer, or for delivery services that IP provided the customer while the customer was served by a different RES. The arguments of various parties in this case are expressly directed at utilities <u>other</u> than IP, and <u>no party</u> has complained about IP's practices in this area. In fact, MEC, IIEC, NE and Staff have all specifically endorsed or approved of Illinois Power's practices. Illinois Power invested considerable resources in establishing its

current system (IP Ex. 1.3, pp. 17-18); and, as noted by MEC, IP developed and implemented its present system through "a significant amount of effort." (MEC Init. Br., p. 31) Both the record and the positions of the parties demonstrate that IP's billing and posting practices with respect to the SBO are reasonable and do not disadvantage any participant. Accordingly, regardless of the determination the Commission may make in this docket with respect to the billing and posting practices of any other utilities, Illinois Power should not be required to change its current system and practices in this area.

II. THE COMMISSION SHOULD NOT ADOPT THE STAFF AND MEC PROPOSALS TO OPEN ANOTHER PROCEEDING, IMMEDIATELY UPON CONCLUSION OF THIS DOCKET, TO DEVELOP A PRO FORMA DELIVERY SERVICES TARIFF

A. Illinois Power Is Willing to Accept the Modified DST Outlines Presented in Staff's Initial Brief, or the Joint Outlines Presented by IP, ComEd and Ameren, as a Basis for Reorganizing IP's DST

In direct testimony, Staff witness Peter Lazare presented proposed outlines for "customer" and "supplier" delivery services tariffs ("DSTs"). (Staff Ex. 2 Rev., Sched. 1 and 2) He proposed that the utilities be required to reorganize their DSTs in accordance with his outlines. In rebuttal testimony, IP witnesses Mr. Gudeman and Ms. Smith (as well as ComEd witness Mr. Alongi and Ameren witness Mr. Carls) presented proposed "customer" and "supplier" DST outlines which IP, ComEd and Ameren jointly developed. ("Joint Outlines") (IP Ex. 1.4; ComEd Exs. 4.1- 4.2; Ameren Ex. 4, Attach. A - B) The utilities' Joint Outlines were based on Mr. Lazare's proposed outlines. However, in IP's view the Joint Outlines are more descriptive of the information contained in the DSTs, would be easier for users to follow, and in general represent improvements over Mr. Lazare's original proposal. (IP Ex. 1.3, p. 6) Although Mr. Lazare had the opportunity to file

surrebuttal testimony to express any comments or concerns about the utilities' Joint Outlines, or to propose modifications to his original outlines, he did no do so. Neither did any other party.[2]

Notwithstanding Mr. Lazare's failure to file any surrebuttal testimony responding to the utilities' Joint Outlines, Staff, in its initial brief, proposed (1) detailed revisions to Mr. Lazare's original "customer" DST outline based on the structure of the utilities' proposed "customer" DST outline, and (2) detailed revisions to the utilities' "supplier" outline based on the structure of Mr. Lazare's original "supplier" outline. (Staff Init. Br., pp. 20-24) The resultant outlines as now proposed by Staff are set forth in Appendices A and B to Staff's initial brief.

Staff had the opportunity to, and should have, presented its proposed revised DST outlines in its surrebuttal testimony. This would have provided the opportunity for cross-examination of Mr. Lazare on the revised outlines, as well as for other witnesses to consider the revised Staff proposal, and possibly to express opinions on those proposals in response to questions from the Hearing Examiner or other questioners.

That having been noted, assuming that a new proceeding to develop a pro forma DST is not initiated upon the close of this docket, IP would be willing to accept the DST outlines attached to Staff's brief as a basis for reorganizing its DSTs. IP would also be willing to use the Joint Outlines for this purpose, if the Commission determines that the Joint Outlines are preferable to the revised outlines in Staff's brief.[3]

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[2]Peoples Energy Services Corporation ("PE Services"), a RES, has expressed support for the utilities' Joint Outlines. (PE Services Init. Br., p. 3)

[3]IP's willingness to use the common outlines included in Staff's brief, or the Joint Outlines, in preparing the DSTs that IP is expected to file on or about June 1, 2001 to initiate the next delivery services rate case, applies only if the Commission does not commence a separate proceeding in the time frame proposed by Staff and MEC to develop a pro forma DST. It would be unnecessary work,

B. Illinois Power is Willing to Work with Staff and Other Interested Parties to Develop Common Definitions for Use in Utilities' Delivery Services Tariffs

Staff witness Dr. Schlaf questioned why the utilities' DSTs should use different definitions to describe the same terms, and stated that Staff would be willing to facilitate meetings with the parties to discuss common definitions. (Staff Ex. 1 Rev., pp. 10-11) Illinois Power is willing to meet with Staff and interested parties to discuss common definitions for the DSTs. (IP Ex. 1.3, p. 19)

C. Initiation of a New Proceeding Immediately After this Docket to Develop a Pro Forma Delivery Services Tariff, as Proposed by Staff and MEC, Would Not Produce Sufficient Incremental Benefit to Justify the Expenditure of Resources the New Proceeding Would Require

Staff and MEC have proposed that the Commission initiate a new proceeding immediately after the conclusion of this docket, to be conducted on an expedited basis, to develop a pro forma DST. (Staff Init. Br., pp. 14-18; MEC Init. Br., pp. 3-22) IIEC and NewEnergy support these proposals. (IIEC/NE Init. Br., pp. 23-50) On the other hand, PE Services, another certified RES, does not support the proposals for a new proceeding to develop a pro forma DST, because of the resources that proceeding would require (PE Services Init. Br., p. 3):

> PE Services has limited resources to deploy toward the myriad of issues and proceedings connected with implementing delivery services. Therefore, PE Services is of the opinion that at this time and in this proceeding the common outline approach is a better alternative than the *pro forma* tariff alternative.

The parties proposing immediate initiation of an expedited docket to develop a pro forma DST have offered only empty rhetoric in support of their positions. They failed to provide any

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and inefficient, to require the utilities to reorganize and re-file their DSTs based on the common outline on June 1, and to refile their DSTs again just a few months later based on the outcome of the pro forma DST docket. Assuming that the reorganized DSTs are filed to initiate the upcoming delivery services rate case, interested parties would then have the opportunity in the context of that rate case to address whether IP had appropriately reorganized its DSTs pursuant to the outlines, as well as to offer other comments or propose other changes

concrete basis for concluding that development of a pro forma DST at this time would in fact advance the development of the competitive electricity market, or that such an effort would yield the incremental benefits that justify the expenditure of the resources it would require. MEC, IIEC and NewEnergy have offered canards about the utilities' attitudes, behavior and reasoning, but these are not valid with respect to Illinois Power.

Illinois Power has clearly stated that it is not opposed to ultimate development of pro forma DSTs. (See IP Init. Br., pp. 3, 16) IP has indicated in §II.A of this reply brief that it is willing to accept the revised DST outlines presented in Staff's initial brief (or to use the Joint Outlines presented by IP, ComEd and Ameren) as a basis for reorganizing its DSTs. IP has also made it clear in §II.B of this reply brief that it is willing to work with Staff and other parties to develop a common set of definitions for the DSTs. (See also IP Init. Br., pp. 4, 14) Additionally, Illinois Power has detailed its plans to engage in a comprehensive process during the first half of 2001, *with the input and participation of Staff and other interested entities,* to rewrite and simplify IP's DST.[4] (See IP Init. Br., pp. 3, 22) The results of the efforts described in the preceding three sentences would be incorporated in IP's residential and non-residential DSTs which are expected to be filed on or about June 1, 2001 to initiate the upcoming delivery services rate cases. Illinois Power has also made it clear that it believes that following the upcoming round of delivery services rate cases, which will

[4]The open, inclusive process that IP will follow with other interested parties, which is already under way, contrasts starkly with the exclusionary process MEC used to develop the proposed pro forma DSTs it submitted in this docket. MEC did not share its proposed pro forma DSTs during the several months of workshops in this docket (where profitable discussions might occurred); it provided a draft of its proposed DSTs only to those parties it thought would support its efforts; and it did not spring its 141 pages of proposed tariffs on the other parties until its direct testimony was filed in November 2000. (Tr. 43, 340; NewEnergy Ex. 1, pp. 17-18) MEC's assertion that it was "upfront about its proposal" (MEC Init. Br., p. 12) does not hold water in light of the facts.

be concluded by April 1, 2002, the Commission should review the extent of uniformity among the utilities' DSTs, and determine if a further proceeding to develop a pro forma DST is warranted. (See IP Init. Br., pp. 3-4, 22, 27, 40)

Further, Illinois Power has clearly stated the reasons that the Commission should ***not*** adopt the proposals of Staff and MEC to initiate an expedited proceeding, immediately upon the close of this docket, to develop a pro forma DST:

- The pro forma DST which would result from the docket proposed by Staff and MEC would produce little incremental benefit to market participants in terms of "uniformity."

- The pro forma DST which would result from the proposed new docket would not advance the development of the competitive electricity market in Illinois, due to the overriding impact of other factors on the rate of development of the market.

- The proposed proceeding would be conducted at the same time that IP (and other utilities) are expending resources to prepare and file their delivery services rate cases on an accelerated schedule ***requested by Staff***, and then commencing to litigate those cases. This could significantly strain the resources of all parties, including Staff. The minimal or non-existent benefits which the pro forma DSTs would produce would not justify the diversion of resources the pro forma DST docket would require from the effort needed to prepare and file the delivery services rate cases – ***a diversion of resources that could result in IP being unable to file its delivery services rate case by June 1, 2001.***

These factors provide ample basis for the Commission to conclude that the Staff and MEC proposals for an immediate new proceeding to develop pro forma DSTs should not be adopted, and to defer further consideration of development of pro forma DSTs until after the conclusion of the upcoming round of delivery services rate cases.

1. Development of Pro Forma DSTs at This Time Would Produce Little Incremental Benefit to Market Participants in Terms of "Uniformity"

While the parties proposing initiation of a new, expedited docket to develop pro forma DSTs offer many platitudes about the supposed benefits of a pro forma DST, their own briefs demonstrate that substantial uniformity among the utilities in the provision of delivery services has already been achieved. For example, in tracing the development of the Illinois DSTs, IIEC and NewEnergy note:

> In the form of an interim order entered on February 18, 1999 [in Docket 98-0680], the Commission approved certain consensus agreements reached by the parties *whereby certain terms were afforded the same or similar definitions and descriptions, and where common business practices were defined.* Some of the consensus items included *descriptions of communications protocols, load forecasting requirements, supplier obligations vis-a-vis applicable reliability organizations, customer authorization requirements, switching supplier requirements, DASR procedures,* among others. *The objective of implementing pro forma delivery tariffs was, thus, in progress.* (IIEC/NE Init. Br., p. 27; emphasis added)

IIEC and NewEnergy then describe how the initial DST cases, in 1999, resulted in further uniformity among the utilities' DSTs and related business practices:

> A review of the Commission's various orders in the 1999 delivery service tariff cases reveals . . . [t]he Commission made essentially the same findings and conclusions with respect to the following services: credit requirements for RES, off-cycle switching, customer specific billing and usage information requirements, customer self-manager description and requirements, power purchase option, among others. (Id., p. 29)

IIEC and NewEnergy next describe Docket 99-0013, in which the Commission determined that metering service for delivery services customers should be unbundled, and established the prices, terms and conditions on which the utilities should offer metering service on an unbundled basis.

IIEC and NewEnergy note, correctly, that the Commission found there to be "substantial uniformity in the utilities' proposed unbundled metering tariffs".[5] (Id., p. 30)

As IIEC and NewEnergy note, at the outset of this docket, the parties engaged in workshops which resulted in a Stipulation among the parties (adopted by the Commission in the Interim Order entered October 18, 2000); "[a]s a result of the Stipulation the utilities have agreed to modify their existing non-residential delivery service tariffs in a number of respects." (Id., p. 31) Staff notes that the workshop phase of this docket and the resulting Stipulation accomplished an increase in the amount of uniformity as to specific DST provisions "to a significant degree". (Staff Init. Br., p. 14)

Thus, as a result of the efforts of the utilities, Staff, other interested parties and the Commission in Docket 98-0680, Docket 99-0013, the 1999 DST cases, and the workshop phase of this proceeding, there is already substantial uniformity among the Illinois electric utilities' DSTs and their related, underlying business practices for the provision of delivery services. Indeed, IIEC and NewEnergy observe that "many of the existing business practices are already common from utility to utility" (IIEC/NE Init. Br., pp. 44-45), and they note, in describing MEC's proposed pro forma DST, that:

> For example, DASR requirements, switch dates, turn on/turn off, disconnection, reconnection, dispute resolution, RES/CSM registration requirements as outlined in the MidAmerican tariffs are basically the same services being offered from utility to utility. (Id., p. 39)

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[5]The high degree of uniformity among the utilities' unbundled metering tariffs is not surprising, since the phase of Docket 99-0013 to consider and adopt those tariffs was preceded by (1) an earlier phase in which the Commission issued an Interim Order setting forth a number of requirements concerning the provision of unbundled metering service, some based on a Stipulation among the parties (see Third Interim Order in Docket 99-0013 (Dec. 22, 1999)), and (2) lengthy workshops in which the parties negotiated proposed terms and conditions for the provision of unbundled metering. No such workshops have occurred in this docket with respect to MEC's proposed pro forma DSTs or any other proposed pro forma DSTs.

Further, as IIEC and NewEnergy note, "many of the delivery services are driven by statutory requirements, thus there should be no differences among the utilities."[6] (Id., p. 45)

With a high degree of uniformity already manifest among the utilities' DSTs and their underlying business practices, as IIEC, NewEnergy and Staff themselves have detailed, it is difficult to see any specific, incremental benefits to be achieved by requiring the parties at this time to devote substantial resources, on an expedited schedule, to another proceeding for the purpose of developing a pro forma DST. This is particularly true when one considers that, under the Staff and MEC proposals, after the pro forma DST is adopted, each utility will be allowed to file individual tariff provisions that vary from the pro forma DST.[7] (See IP Init. Br., pp. 27-28)

Moreover, although IIEC and NewEnergy cite a number of "benefits" they contend would result from immediate adoption of pro forma DSTs, ***there is no evidence that these "benefits" are***

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[6]IIEC and NewEnergy attempt to analogize the adoption of a pro forma DST to the adoption by virtually all states of the Uniform Commercial Code ("UCC") to accommodate sales and other financial transactions. (IIEC/NE Init. Br., p. 34) This is a poor analogy at best. The terms of the UCC are relatively general in nature; the annotated statute books of Illinois and of other states that have adopted the UCC contain hundreds of pages of summaries of reported cases that have addressed questions of interpretation and application of the UCC. An accurate analogy to the UCC would be to Article 16 of the Act, which sets forth requirements for the provision of delivery services which each utility must follow, not to a pro forma DST. Indeed, asserting that each Illinois utility needs to have essentially the same DST would be like requiring every company in a particular industry to have the same contract and purchase order forms based on the requirements of the UCC. Obviously, the state legislatures have not required such "uniformity" under the UCC, and neither does the Public Utilities Act in the provision of delivery services.

[7]IIEC and NewEnergy assert that it is an artificial barrier to be "forcing" potential competitors to participate in "multiple administrative proceedings." (IIEC/NE Init. Br., p. 26) However, the Staff and MEC proposals will not eliminate "multiple administrative proceedings", since each utility will be able to file proposed tariff provisions that differ from the pro forma DSTs. (See IP Init. Br. §III.B.4) Further, there is no evidence that any certified or potential RESs feel "forced" to participate in "multiple administrative proceedings." For example, of the approximately 15 RESs in the Illinois market, only three (MEC, NewEnergy and PE Services) chose to participate in the hearings phase of this statewide docket.

not already being realized through the existing level of uniformity among the utilities' DSTs and related business practices.[8] IIEC and NewEnergy assert that without development and implementation of pro forma DSTs, "RESs attempting to serve multi-utility and statewide business association customers unnecessarily will have to operate multiple and conflicting business in order to operate within the Illinois retail electric market" (IIEC/NE Init. Br., p. 25), but ***there is no evidence that RESs must do this today***, given the existing level of commonality among the utilities' DSTs and among their underlying business practices.[9] It is noteworthy in this regard that choice of gas suppliers has been available to non-residential customers in Illinois for some 15 years, there has never been a pro forma gas transportation tariff for the Illinois local distribution companies ("LDCs"), and yet the competitive retail gas market in Illinois has flourished, with a high degree of participation by both gas suppliers and non-residential gas customers. There is no evidence that development of the competitive retail gas market has been impeded by lack of a pro forma LDC transportation tariff. (See Ameren Ex. 4, pp. 14-15; Tr. 263)

In fact, although the parties advocating an immediate new proceeding to develop a pro forma DST bemoan the difficulties purportedly experienced by RESs and potential RESs due to the non-uniformity of the utilities' DSTs, ***only one specific instance of a burden on RESs due to non-***

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[8]The five benefits cited by IIEC and NewEnergy are customer understandibility of delivery services rules and regulations is enhanced, marketer/supplier entrance into the market is enhanced, consistency in application of rules and regulations pertaining to delivery services is enhanced, common business practices that are integral to the implementation of delivery services are applied uniformly, and the Commission's interpretation and enforcement of delivery services rules and regulations is consistently applied. (IIEC/NE Init. Br., p. 34)

[9]MEC, one of the two RESs advocating development of a pro forma DST, is actively engaged in serving retail customers in both the IP and ComEd service areas. (Tr. 245, 293) Whatever lack of uniformity there may be between ComEd's and IP's DSTs has not deterred MEC from operating in both service areas.

uniform tariff provisions or practices among the utilities has been cited in this record. That instance is the issue relating to billing balances for bundled service previously provided to customers now served by a RES under the SBO, ***and that issue is being dealt with on its merits in this docket.*** Moreover, the SBO issue is not really about non-uniformity; rather, it is about certain RESs' opposition to the billing and posting practices of two particular utilities.[10] One would think that if a lack of uniformity and commonality among the utilities' DSTs and related business practices were in fact deterring RESs from entering the Illinois market, or from entering multiple service areas, more **specific examples** of inconsistent DST provisions that are causing this deterrence would have been offered. Indeed, what is more telling than the fact that two RESs (MEC and NewEnergy) are advocating immediate initiation of another docket to develop a pro forma DST (see MEC Init. Br., pp. 15-16) is the fact that ***no <u>other</u> certified RESs or potential RESs have found a lack of uniformity of sufficient importance to take this position or even to participate in the litigation phase of this docket.***[11] Perhaps the other certified RESs and potential RESs realize that many other factors are more significantly impacting the development of the competitive electricity market in Illinois. as detailed in §III.B. 1 of IP's Initial Brief and in §II.C.2 below.

In short, the proposed expedited proceeding to develop a pro forma DST is a solution in search of a problem. In fact, it may be more than even its proponents realize they need. For example, IIEC and NewEnergy, in describing what they mean by a "pro forma tariff", state that "pro

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[10]If IP and other utilities changed their billing and posting practices relating to bundled service balances and the SBO to match those of the two utilities whose practices are the subject of the RESs' concerns, "uniformity" would be achieved, but the complaining RESs would still be unhappy.

[11]As noted above, PE Services, a certified RES participating in this case, does not support the proposals to initiate another proceeding to develop a pro forma DST.

forma means tariffs that share a common structure, format, and terminology, and allow for deviations." (IIEC/NE Init. Br., p. 26) Yet IP (and other utilities) have stated their willingness to reorganize their DSTs based on a common outline, and to work with the parties to develop common definitions (see §II.A and §II.B above); and no party has disputed the fact that some differences among individual utilities' DSTs are necessary and must be allowed.[12] Thus, the characteristics that IIEC and NewEnergy attribute to a pro forma DST can be realized without another resource-intensive proceeding. There would be no incremental benefit produced by dedicating substantial resources at this time to another proceeding to develop a pro forma DST.

2. Development of a Pro Forma DST at This Time Would Not Override the Effects of the Numerous Other Factors That Are Impacting the Development of the Competitive Electricity Market in Illinois

Another reason that an immediate, expedited docket to develop a pro forma DST would not produce sufficient incremental benefit to justify the expenditure of resources the proceeding would require is that implementation of a pro forma DST would not override the effects of numerous other factors that are impacting the rate of development of the competitive electricity market in Illinois. Illinois Power detailed those other factors in §III.B.1 of its Initial Brief (pp. 16-21). While the proponents of an immediate, expedited docket to develop a pro forma DST acknowledge the existence and impacts of these other factors, they dismiss them by stating that these other factors are outside the Commission's jurisdiction, and that the Commission should attempt to enhance

[12]As described by Staff witness Mr. Lazare, under the common outline approach, each utility's DST would use the section headings from the common outline, each utility's DST would have the sections in the order that they are presented in the outline, and each utility's DST would cover the same subject matter under each of the outline headings. (Tr. 128-29) Thus, the use of a uniform outline would result in a common structure and format among the utilities' DSTs.

competition by acting in those areas in which the Commission can act. (See MEC Br., p. 15) But that does not make these other factors any less significant or real:

- Are we to believe that if a pro forma DST is developed at this time, the volatility and uncertainty in the wholesale power markets, which may have deterred potential suppliers from committing to serve retail load, will suddenly be resolved, or at least overcome? *Of course not.*

- Are we to believe that if a pro forma DST is developed at this time, a potential RES who has concluded that not enough customers are eligible yet for supplier choice in Illinois to warrant the RES entering the Illinois market (particularly in service areas other than ComEd's) will as a result decide to enter the market before all customers are eligible? *Of course not.*

- Are we to believe that if a pro forma DST is developed at this time, a potential RES who has not entered the ComEd or IP service areas because the transition charges which a delivery services customer must pay do not leave sufficient margin in the supplier's pricing to serve retail load profitably will suddenly decide to leap into those markets? *Of course not.*

- Are we to believe that if a pro forma DST is developed at this time, a RES who has not entered the Ameren or CILCO service areas because those utilities' bundled tariffed rates are too low to compete against, or who has not entered the IP, ComEd or Ameren service areas because it cannot compete against the power purchase option ("PPO") price, will suddenly leap into those markets? *Of course not.*

- Are we to believe that if a pro forma DST is developed at this time, out-of-State utilities and their power marketing affiliates, who are concerned about the implications of the "reciprocity" provisions of §16-115(d)(5) of the Act (220 ILCS 5/16-115(d)(5)), will be any more likely to enter the retail electricity market in Illinois in the near term? *Of course not.*

- Are we to believe that if a pro forma DST is developed at this time, a RES who has been concerned about the risks which energy imbalance provisions in open access transmission tariffs may create in serving retail load will suddenly find those risks mitigated or eliminated? *Of course not.*

While it is easy to assert that the Commission should "tak[e] action in those areas where the Commission can act" (MEC Init. Br., p. 15), the proponents of conducting an expedited proceeding to develop a pro forma DST must bear some burden to demonstrate that such an effort will produce

sufficient incremental benefit – in light of the many other factors impacting the development of the competitive electric market in Illinois – to justify the expenditure of resources the proceeding would require. The proponents have failed to meet that burden in this case. Nor is MEC's view that by forcing the adoption of pro forma DSTs the Commission will advance the development of the competitive retail market shared by other market participants. Chairman Mathias' October 2000 "Report of the Chairman's Fall 2000 Roundtable Discussions Re: Implementation of the Customer Choice and Rate Relief Law of 1997" reports that the participants in those roundtable discussions encouraged the Commission to pursue a total of eight actions to further the goals of the Customer Choice Law. The eight recommended actions for the Commission ***did not include*** developing a pro forma DST to be adopted by all of the electric utilities. (See Tr. 611-12)

Staff's position, echoed by MEC, was that "uniform tariffs [should] be in place by the time that other factors presently hindering the development of the competitiveness of the Illinois market become less problematic." (Staff Ex. 3, p. 9; MEC Init. Br., p. 5) Obviously, the impacts of transition charges, the statutory "reciprocity" provision, low (relative to market prices) and frozen bundled tariff rates, PPO pricing, unsettled wholesale power markets and the need for more generating capacity, and the other factors outside the Commission's control (see IP Init. Br., pp. 18-20) will not be eliminated or dissipated in the near term. Staff, MEC and other parties have recognized the impact of external factors on the development of the competitive retail electricity market. However, by nonetheless advocating an immediate, expedited proceeding to develop a pro forma DST, these parties have failed to carry to a logical conclusion their recognition of the factors which are driving the rate of development of the competitive retail electricity market. Their proposals should not be adopted by the Commission.

3. Conducting the Pro Forma DST Proceeding Advocated by Staff and MEC Would Require Substantial Resources Which Are Needed for Other Regulatory Initiatives

In §III.B.3 of its Initial Brief, Illinois Power explained how the expedited proceedings proposed by Staff and MEC to develop a pro forma DST would require substantial expenditures of resources by the utilities, Staff and other parties, and would divert resources from other activities that are more critical to the development of just and reasonable DSTs. The most significant of those other activities is the preparation, filing and prosecution of the utilities' upcoming DST cases.

The response of the proponents of the pro forma DST proceeding to the resources issue is to treat the utilities as having unlimited resources. Staff displays particular *chutzpah*. Staff, having persuaded the utilities to prepare and file their residential DST cases four months earlier than the statutorily required dates in order to ease the burden on Staff resources of a series of six-month rate cases (i.e., October 1, 2001 to April 1, 2002)[13], blithely states that "it is likely that the residential tariff proceedings and the new uniformity proceeding could take place simultaneously without creating undue hardship on the parties or the Commission" and "without excessive disruption." (Staff Init. Br., pp. 16, 18) Apparently Staff believes that it is the only entity that faces resource limitations. Staff's misconception may be due to its erroneous assumption that "utilities are not presently planning a significant number of additions to the terms and conditions of existing delivery services tariffs." (Id., p. 16; see also id., p. 18) This is certainly an incorrect assumption with respect to Illinois Power, in light of the Company's plans for a comprehensive DST simplification process

[13]See IP Ex. 1.3, p. 11; Tr. 88-91, 371-72, 435-36; MEC Ex. 5.0, p. 8.

that is expected to result in new residential and non-residential DSTs being filed on June 1, 2001.[14] Moreover, if Staff expects the residential DST cases to be so simple, then why did Staff need to ask the utilities to file their DST cases four months early?

Staff's offer (Staff Init. Br., p. 16) to make its proposed pro forma DST proceeding a 6-7 month proceeding, as proposed by MEC, rather than a 3-1/2 month proceeding as originally proposed by Staff, is no help: It would simply extend the pro forma DST proceeding farther into the discovery and litigation phase of the delivery services rate cases. During the 3 to 4 months following the filing of the delivery services rate cases, Staff and other parties will be reviewing and evaluating the utilities' filings, conducting discovery, and preparing their own direct cases. (Tr. 94-95) Based on past experience, it can be expected that Staff will expect assiduous attention by the utilities to Staff's data requests in order to produce responses as quickly as possible.

Nor should anyone labor under the misconception that the proposed pro forma DST case would be simple or not contentious. To the contrary, it can be expected to be extremely complex. It will involve potentially numerous parties negotiating and litigating, not a set of common business practices, but precise tariff language that is acceptable to everyone. In this regard, IP disputes IIEC and NewEnergy's assertion that "there were no sound or credible objections to MidAmerican's description of the basic DSTs that are already common from utility to utility." (IIEC/NE Init. Br., p. 40) Not only did ComEd develop an extensive set of comments on the MEC pro forma DSTs,

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[14]In terms of the purported simplicity of the upcoming delivery services rate cases, not to be overlooked is the fact that IP, and we anticipate all other utilities, will be basing their DST filings on completely new costs of service and revenue requirements, including new rate bases, operating expense statements and costs of capital, based on different test years than were used in the 1999 DST cases. (See IP Ex. 1.5, p. 8) These proposed new revenue requirements will, of course, have to be allocated between the non-residential and residential classes and among service segments within those two classes, and appropriate tariff charges will have to be designed.

which revealed a large number of problems and issues with MEC's proposed tariffs and exposed them as "overly simplistic and flawed" (ComEd Ex. 4.0 Rev., pp. 23-24; ComEd Exs. 4.3, 4.4, 4.5), but IP, in its Initial Brief (pp. 31-33), set forth a lengthy list of problems with the MEC tariffs. Undoubtedly, given more time, ComEd, IP and other utilities will be able to surface more problems with MEC's pro forma DSTs. While any or all of the individual problems may be capable of resolution, the sheer magnitude of them presages a complex and lengthy proceeding.[15]

IIEC and NewEnergy take a similarly cavalier attitude towards the resources that the utilities would be required to expend on the proposed pro forma DST proceeding. (IIEC/NE Init. Br., p. 48) However, IIEC and NewEnergy would not be required to participate in the proposed pro forma DST proceeding, or could chose to proceed at a reduced level, focusing only on selected issues. In contrast, IP and the other utilities would have no choice but to participate comprehensively in this mandated Commission proceeding, with the associated resource requirements and the impacts on the utilities' ability to accomplish other, elective tasks – such as filing their upcoming delivery services rate cases four months in advance of the statutorily-required date. That early filing will benefit IIEC and NewEnergy, as well as Staff.

The expedited pro forma DST proceeding proposed by Staff and MEC would not produce sufficient incremental benefit to justify the expenditure of resources it would require, and the

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[15]IP also disputes MEC's self-serving assertions that "It was not MidAmerican's intention to file MidAmerican's existing DSTs" as the pro forma DST and that MEC "did not simply re-label its existing delivery services tariffs and propose them as the pro forma tariffs in this proceeding." (MEC Init. Br., p. 13) MEC witness Rea, who developed and sponsored the MEC tariffs, was able to identify only one place in the 141 pages of tariffs where MEC used a provision from the current ComEd or IP DSTs rather than the comparable provision in the current MEC DST. (Tr. 359-61) Moreover, in several places, MEC made sure that provisions in the current MEC tariffs were preserved by the proposed pro forma DSTs. (See Tr. 379-82, 386-87; MEC Ex. 1.1, Sheets 14, 25, 26, 36; MEC Ex. 1.3, Sheets 20-21)

diversion of those resources from other, more important regulatory activities, including preparation, filing and prosecution of the upcoming delivery services rate cases. The Staff and MEC proposals should not be adopted by the Commission.

D. If the Commission Does Initiate a Proceeding to Develop a Pro Forma DST, It Should Specify That Individual Utility Tariff Provisions That Vary from the Pro Forma DST Will Be Considered and Approved in That Proceeding

Under the Staff and MEC proposals, after a pro forma DST is adopted in the proceeding that would commence immediately following the close of this docket, utilities would be allowed to make individual filings for tariff provisions that varied from the pro forma DST. (See MEC Ex. 1.0, p. 13; MEC Ex. 5.0, pp. 12, 13, 14-15, 25, 26-27, 32-33, 39; Tr. 33, 81, 363-64) There was no suggestion by any party that a utility should not have the right to file individual DST provisions that vary from the pro forma DST. However, if the Commission decides to initiate the pro forma DST proceeding (which it should not do, for the reasons set forth in §§II.A, B and C above), the Commission should provide that individual utility tariff provisions that vary from the pro forma DST can be considered and approved in the pro forma DST docket itself (in both the negotiation and workshop phases). This would make the pro forma DST docket go more smoothly and efficiently, and should lead to a greater degree of agreement in the workshop phase as to the terms of the pro forma DST.

Consider a utility that believes it will need a provision in its DST that varies from a provision in the proposed pro forma DST that other parties support. If that utility agrees to the pro forma DST provision, it faces the uncertainty of getting its individual tariff provision approved in a subsequent separate filing.[16] The utility therefore would have an incentive to oppose the pro forma DST

[16]Staff or other parties could oppose individual utility filings for approval of tariff provisions that varied from the pro forma DST, and there would be no guarantee that such individual filings would be approved. (Tr. 369) Further, as IP explained at page 28 of its Initial Brief, the standards

provision, and to attempt to negotiate or litigate for inclusion of that utility's preferred provision as the pro forma DST provision, or at least for a pro forma DST provision that will accommodate that utility's needs. This would reduce the amount of agreement the parties can achieve in the workshops, and would lead to a pro forma DST that represents the "least common denominator" rather than "best practices." On the other hand, if this same utility could obtain agreement of the parties and approval of the Commission for its individual provision in the pro forma DST docket, rather than having to wait till a subsequent filing, the utility would have no reason to object to the provision in the pro forma DST that all the other parties may find acceptable. (See Tr. 369-70)

Accordingly, if the Commission initiates a proceeding following the close of this docket to develop a pro forma DST, the Commission should provide that individual utility tariff provisions that vary from the pro forma DST will be considered and approved in that proceeding.

III. CONCLUSION

For the reasons set forth in Illinois Power's Initial Brief and in this Reply Brief, the Commission's final order in this proceeding:

(1) Should not require Illinois Power to make any changes in its current billing and posting practices and procedures relating to customers being billed by a RES under the SBO.

(2) Should not adopt the proposals of MEC and Staff to initiate a new proceeding immediately following the conclusion of this docket to develop and adopt a pro forma DST. Instead, the Commission should defer further consideration of the need for a proceeding to develop a pro forma DST until after the completion of the utilities' upcoming delivery services rate cases.

(3) Should find that IP's plans for placing customer information and delivery services-related contracts on its website satisfy Staff's recommendation.

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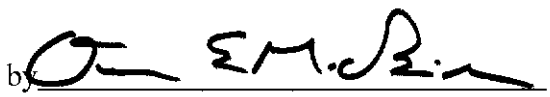
that would apply to a utility's filings for approval of individual tariff provisions that varied from the pro forma DST are problematic.

(4) Should find that Illinois Power's tariff provisions relating to Interim Supply Service satisfy Staff's recommendations.

(5) Should not reach any decision on the customer kW demand level at which interval metering can be required as a condition of taking delivery services, and should not adopt the proposal of Alliant Energy that any such demand level in a utility's DST must also apply to its bundled tariffs. However, if the Commission determines that it needs to reach a substantive conclusion on this topic, the Commission should authorize utilities to require customers with maximum demands of 400 kW and above to install interval metering as a condition of taking delivery services, a provision which the Commission approved for ComEd in Docket 99-0117.

Respectfully submitted,

ILLINOIS POWER COMPANY

by 

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused copies of Illinois Power Company's Reply Brief in Docket No. 00-0494 to be served on the persons shown on the attached service list by placing copies in the U.S. Mail properly addressed and with postage prepaid on January 26, 2001.

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